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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

**[FWS-R3-ES-2015-0033; FF03E00000-FXES11120300000-156]**

### **Draft Environmental Impact Statement for the Proposed Midwest Wind Energy Multi-Species Habitat Conservation Plan**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement; notice of scoping meeting and request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), advise the public that we intend to prepare an environmental impact statement (EIS) to evaluate the impacts of several alternatives relating to the proposed issuance of Endangered Species Act (ESA) Incidental Take Permits (Permit(s) or ITP(s)) under the Midwest Wind Energy Multi-

Species Habitat Conservation Plan (MSHCP). We also provide this notice to announce a public scoping period.

The MSHCP is being prepared by the Service and their planning partners for wind energy development within an eight-state Plan Area. The activities covered under the MSHCP (“Covered Activities”) include the construction, operation, maintenance, and decommissioning of wind energy facilities within portions of the Plan Area where ESA incidental take coverage may be considered, as well as activities associated with the management of mitigation lands. The planning partners have requested incidental take coverage for eight species in the MSHCP (“Covered Species”), including six species that are federally listed, one species that is not federally listed but may become listed during the term of the MSHCP, and the bald eagle (*Haliaeetus leucocephalus*), which is protected under the Bald and Golden Eagle Protection Act (Eagle Act; 50 CFR 22.11). As allowed under the Eagle Act, we anticipate extending Eagle Act take authorization for bald eagle through the section 10(a)(1)(B) permit(s) associated with the MSHCP, provided permittees are in full compliance with the terms and conditions of the ITP and Eagle Act.

**DATES:** The public scoping period begins with the publication of this notice in the *Federal Register* and will continue through [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Service will consider all comments on the scope of the EIS analysis that are received or postmarked by this date. Comments received or postmarked after this date will be considered to the extent

practicable. The Service will also conduct eight scoping meetings during the scoping period:

- July 13, 2015 – Elliott Recreation Center, 1000 E. 14<sup>th</sup> Street, Minneapolis, Minnesota, 5 to 7 p.m.
- July 14, 2015 – Warner Park Community Center, 1625 Northpost Drive, Madison, Wisconsin, 5 to 7 p.m.
- July 15, 2015 – Iowa State University Memorial Union, Campanile Room, 2229 Lincoln Way, Ames, Iowa, 5 to 7 p.m.
- July 16, 2015 – Battle High School, Commons, 7575 East Street Charles Road, Columbia, Missouri, 5 to 7 p.m.
- July 20, 2015 – Letts Community Center, 1220 West Kalamazoo Street, Lansing, Michigan, 5 to 7 p.m.
- July 21, 2015 – Columbus Downtown High School, Commons, 364 South 4<sup>th</sup> Street, Columbus, Ohio, 5 to 7 p.m.
- July 22, 2015 – World Sports Park, Ballroom, 1313 South Post Road, Indianapolis, Indiana, 5 to 7 p.m.
- July 23, 2015 – Illinois Wesleyan University Memorial Center, Young Main Lounge, 104 E. University Avenue, Bloomington, Illinois, 5 to 7 p.m.

The scoping meetings will provide the public an opportunity to ask questions, discuss issues with Service and State staff regarding the EIS, and provide written comments.

In addition, the Service will host an online webinar on July 28, 2015 at 1:00 pm central time. Information on how to participate in the webinar is provided on the Internet at: <http://www.midwestwindenergyhcpeis.org>.

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods:

- *U.S. Mail:* Regional Director, Attn: Rick Amidon, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437-1458.
- *Electronically:* Go to the Federal eRulemaking Portal, at <http://www.regulations.gov>. In the search box enter **Docket Number FWS–R3–ES–2015–0033**.

**FOR FURTHER INFORMATION CONTACT:** Rick Amidon, Ecological Services, at the address shown above or at (612) 713-5164 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321*et seq.*) and its implementing regulations in the Code of Federal Regulations at 40 CFR 1506.6, and pursuant to Section 10(c) of the ESA and Section 668a of the Eagle Act. We intend to prepare a draft EIS to evaluate the impacts of several alternatives related to the potential issuance of ITPs under the MSHCP from Covered Activities. The permits would

authorize the incidental take of species included in the MSHCP that could occur as a result of existing and future wind energy development and operations. The planning partners intend to request a 45-year permit term.

The primary purpose of the scoping process is for the public and other agencies to assist in developing the EIS by identifying important issues and alternatives related to the MSHCP and the Service's proposed action (issuance of ITPs under the MSHCP).

## **Background**

Section 9 of the ESA prohibits "take" of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538, 1533, respectively). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term "harm" is defined by regulation as an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term "harass" is defined in the regulations as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. "Incidental take" is defined by the ESA

as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- The taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
- The applicant will develop a HCP and ensure that adequate funding for the plan will be provided;
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The applicant will carry out any other measures that the Secretary may require as being necessary or appropriate for the purposes of the HCP.

Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32.

Eagles are protected under the Eagle Act, which prohibits take and disturbance of individuals and nests. “Take” under the Eagle Act includes any actions that pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, and disturb eagles. “Disturb” is further defined in 50 CFR 22.3 as to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering

behavior. 50 CFR 22.11 allows Eagle Act take authorization to be extended to permittees authorized to take eagles by an ITP issued pursuant to section 10(a)(1)(B) of the ESA. Take coverage for bald eagles provided through an ITP applies for the duration of the permit, or until the amount or level of take authorized has been met, provided the permittee complies with all terms and conditions provided in the ITP.

### **Proposed Plan**

The MSHCP is being prepared by the Service and their planning partners for wind energy development within an eight-state Plan Area. The planning partners include the conservation agencies for seven of the eight states within the Plan Area, the American Wind Energy Association, a consortium of wind energy companies, and The Conservation Fund. The following summarizes information provided in the draft MSHCP.

The MSHCP Plan Area encompasses all lands within the political boundary of Region 3 of the Service, which includes eight states: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The geographic area where incidental take authorization would be allowed under the MSHCP (“Covered Lands”) are a subset of the Plan Area and specifically exclude lands that are within: (a) 20 miles of sensitive bat hibernacula identified by the Service and state wildlife agencies; (b) 3 miles of the shores of the Great Lakes; (c) 1 mile of the edges of rivers supporting bird and bat migration corridors and/or concentrations of wintering waterfowl; (d) floodplain areas along the Mississippi and Illinois Rivers; (e) high bat concentration areas in Indiana and Missouri; and (f) bird migratory areas in Illinois and around large lakes in Minnesota. In

2012, the Service prepared a notice of intent to prepare the MSHCP (77 FR 52754).

Public comment during that scoping process informed the geographic scope of Covered Lands included in the MSHCP.

The MSHCP does not preclude the development of wind energy projects outside of Covered Lands; however, those projects would not be eligible for participation in the MSHCP. Mitigation measures under the MSHCP (e.g., habitat protection and restoration) may occur throughout the Plan Area, as appropriate for the conservation of Covered Species.

Covered Activities under the MSHCP include actions necessary to construct, operate, maintain and repair, decommission and reclaim, and repower commercial multi-turbine wind energy projects with Covered Lands. Covered Activities also include management of compensatory mitigation lands and monitoring. The MSHCP anticipates 33,000 megawatts (MW) of new wind energy may be installed within the Covered Lands over the term of the permit(s). New wind energy development would vary by state. The actual implemented build-out of new wind development projects may be less than the maximum anticipated build-out, depending on the number and generation capacity of wind energy projects that are issued take authorizations under the MSHCP. The Plan Area also currently supports approximately 13,681 MW of installed wind energy. Existing commercial multi-turbine wind facilities would be able to “opt in” to the MSHCP if they meet all of the requirements of the MSHCP for existing facilities and implement the required avoidance, minimization, and mitigation measures. Repowering of existing commercial wind energy facilities would also be included. There would be no



limit on the number of qualifying existing wind energy facilities that may opt-in to the MSHCP.

The MSHCP would cover eight species that are subject to injury or mortality at wind turbine facilities, including six federally listed species and two unlisted species. The six federally listed species covered under the MSHCP include: Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), Kirtland's warbler (*Dendroica kirtlandii*), piping plover (*Charadrius melodius*) (Great Lakes population and northern Great Plains population which are two distinct population segments), and interior least tern (*Sternula antillarum athalassos*). The unlisted species included in the MSHCP are little brown bat (*Myotis lucifugus*) and bald eagle (*Haliaeetus leucocephalus*). Species may be added or deleted as the MSHCP is developed based on further analysis, new information, agency consultation, and public comment.

The proposed permit term under the MSHCP is 45 years. During the first 15 years, proposed and existing commercial multi-wind energy projects may apply for and receive take authorizations under the MSHCP. The duration of take authorizations issued to new projects would be 30 years from the time project operations commence or up to the 45 year term of the MSHCP. The duration of take authorizations issued to existing commercial multi-turbine wind energy projects would extend from the time of issuance until the project is decommissioned and reclaimed up to a period of 30 years.

The MSHCP would be implemented as both a "template" HCP for wind energy project proponents and a "programmatic" HCP implemented through a "master permittee." Under the template HCP, the Service would directly issue individual permits to applicants that agree to implement the MSHCP. Under the programmatic HCP, the

Service would issue a permit to a master permittee, who would be responsible for issuing certificates of inclusion to wind energy companies that agree to implement the MSHCP at their facility. Issuance of certificates of inclusion by the master permittee would be completed in coordination with, and with concurrence from, the Service. The master permittee is anticipated to be comprised of a Board with representation from the wind energy industry and wind energy development–related conservation interests.

### **Environmental Impact Statement**

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Based on 40 CFR 1508.27 and 40 CFR 1508.2, we have determined that the proposed MSHCP may have significant effects on the human environment. Therefore, before deciding whether to issue Federal permits under the MSHCP, we will prepare an EIS to analyze the environmental impacts associated with those actions.

The EIS will consider the impacts of the proposed action – the issuance of section 10(a)(1)(B) permits under the ESA on the human environment. The EIS will also include analysis of a reasonable range of alternatives to the proposed action. Alternatives considered in the EIS may include, but are not limited to, variations in the permit term or permit structure; the No Surprises timeframe allowed under the ITPs; the level of take allowed; the level, location, or type of conservation, monitoring, or mitigation provided in the MSHCP; the scope of Covered Activities; the list of Covered Species; or a combination of these factors. Additionally, a No Action Alternative will be included.

Under the No Action Alternative, the Service would not issue ITPs, and wind energy developers would be obligated to prepare an independent Section 10(a)(1)(B) application and/or eagle permit application; avoid incidental take of federally-listed species and bald eagle; or be subject to enforcement action by the Service.

The EIS will identify and describe direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socioeconomics, climate, and other environmental resources that could occur with the implementation of the proposed action and alternatives. The Service will also identify measures, consistent with NEPA and other relevant considerations of national policy, to avoid or minimize any significant effects of the proposed action on the quality of the human environment. Following completion of the environmental review, the Service will publish a notice of availability and a request for comment on a draft EIS, which will include a draft of the proposed MSHCP.

### **Request for Information**

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We will consider these comments in developing the draft EIS. We seek specific comments on:

1. Biological information and relevant data concerning Covered Species;
2. Additional information concerning the range, distribution, population size, and population trends of Covered Species;

3. Direct, indirect, and cumulative impacts that implementation of the proposed Covered Activities could have on endangered, threatened, and other Covered Species, and their communities or habitats;
4. Other possible alternatives to the proposed action that the Service should consider;
5. Other current or planned activities in the subject area and their possible impacts on Covered Species;
6. The presence of archaeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
7. Identification of any other environmental issues that should be considered with regard to the proposed MSHCP and permit action.

### **Public Availability of Comments**

You may submit your comments and materials by one of the methods listed above in the **ADDRESSES** section. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we use in preparing the EIS, will be available for public inspection by appointment, during normal business hours, at the Services Midwest Regional Office in Bloomington, Minnesota. (see **FOR FURTHER INFORMATION CONTACT** section). You may obtain copies of this notice on the Internet at: <http://www.midwestwindenergyhcpeis.org>, or from the Midwest Regional Office (see **FOR FURTHER INFORMATION CONTACT** section).

### **Scoping Meetings**

See **DATES** for the date/s and time/s of our public scoping meetings. The primary purpose of these meetings and public comment period is to provide the public with a general understanding of the background of the proposed action and to solicit suggestions and information on the scope of issues and alternatives we should consider when drafting the EIS. Written comments will be accepted at the meetings. Comments can also be submitted by methods listed in the **ADDRESSES** section. Once the draft EIS and proposed MSHCP are complete and made available for review, there will be additional opportunity for public comment on the content of those documents.

Persons needing reasonable accommodations in order to attend and participate in the public meetings should contact the Midwest Region using one of the methods listed above in **ADDRESSES** as soon as possible. In order to allow sufficient time to process requests, please make contact no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

**Authority**

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*), section 668a of the Eagle Act (16 U.S.C. 668a–668d), and per NEPA regulations (40 CFR 1501.7, 40 CFR 1506.5 and 1508.22).

**Dated:** May 29, 2015.

**Lynn Lewis,  
Assistant Regional Director,  
Ecological Services,  
Midwest Region.**

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